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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3475 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MISTRY DEVRAM VASTA

Versus

MISTRY JAYABEN RUDA

Appearance:

1. Special Civil Application No. 3475 of 1986

MR SURESH M SHAH for Petitioner No. 1

SERVED BY RPAD - (R) for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 01/07/2002

ORAL JUDGEMENT

The original petitioner, Mistry Devram Vasta has challenged in this petition the impugned order dated 13.11.1978 passed by the Mamlatdar, Anjar holding that the petitioner is not entitled to restitution as he was not declared tenant as well as the impugned order at Annexure-C dated 28.4.1983 passed by the Deputy Collector and the impugned order at Annexure-D passed by the Gujarat Revenue Tribunal on 11.4.1986.

On 25.8.1986 straightway this petition was admitted by the learned Single Judge of this court and Rule was made returnable on 4.9.1986. Thereafter, the matter was adjourned. However, thereafter, the matter could not come up for final disposal for one or the other reason.

During the pendency of this petition, original petitioner Mistry Devram Vasta expired on 11.4.1991 as stated at the Bar by learned counsel Shri Mehul Shah for the petitioner. Thereupon, Mr.Shah had filed application to bring legal heirs of sole deceased petitioner-Mistry Devram Vasta before this court on 10.6.1991. However, no order came to be passed on that matter because according to Mr.Shah the file of that application was not traceable in the Registry. He, therefore, requested to direct the office to trace out the matter of the Civil Application and place it before this court for orders or to permit him to reconstruct the papers of Civil Application for bringing heirs of sole deceased petitioner on record.

Having regard to the peculiar facts and circumstances of the case, I am of the considered opinion that even if the submission was accepted to bring legal heirs of deceased petitioner on record, then also it would have been an exercise in futility because on merits no order could have been passed in favour of the petitioner after several years. That apart Mamlatdar, Deputy Collector as well as Gujarat revenue Tribunal by the impugned orders at Annexures A, C and D held that no restitution can be ordered in favour of the original petitioner. In that view of the matter, this court would not have exercised its power under Article 226 of the Constitution of India and that too after so many years. This petition is labelled under Article 226 of the Constitution of India, but in my considered opinion it should be under Article 227 of the Constitution of India. When sole petitioner died in 1991, then this petition stood abated. It may be that Mr.Shah had filed Civil Application for bringing legal heirs of sole deceased petitioner on record, which is not traceable in the office. However, mere filing of the application in 1991

and not taking any steps in the matter so far would certainly go against the applicant. At this juncture, if the permission is granted to reconstruct the Civil Application then this court will have to issue fresh notice to the respondents and we do not know when the respondents will be served and the matter be decided. This is one of the cases where the court must put its final seal.

In view of the above, this petition fails on merits as well as on the ground that after the death of the sole petitioner, the petition is abated. Accordingly this petition is dismissed. Rule discharged.

(B.J.Shethna, J.)
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